UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

vs.

D-4 PAUL STEWART,

Defendant.
__________________________________/

CRIMINAL NO. 12-20030

HON. NANCY G. EDMUNDS

REPLY TO DEFENDANT STEWART'S RESTITUTION MEMORANDUM

The United States of America presents the following as its Reply to defendant Paul Stewart's Memorandum Regarding Restitution:

I. Zajac's 33% Salary Increase

Stewart's efforts to block restitution tied to Zajac's 33% increase are without merit, and they ignore the nature of Zajac's 30-year relationship with the pension systems.

First, Stewart claims that no restitution is owed because the lawyers who replaced Zajac, after Zajac had been terminated, charged the pension systems even more money than Zajac was paid after he had received the 33% raise. This position disregards the history of the business relationship between Zajac and the pension systems for the prior thirty years that came out at the trial. Zajac had been making a steady income from the pension systems, with periodic raises for the cost of living. But for the corrupted vote in favor of a 33% raise for Zajac, Zajac would have continued to perform work for the pension systems at the prior rate. In fact, this prior rate had just been increased earlier in 2007. From October 2007 through 2012, however, the pension systems paid the 33% raise to Zajac based on the corrupted votes of Stewart and his co-conspirators. There was no evidence or indication at trial that Zajac would have quit his job as general counsel to the pensions systems if he had not received the 33% raise. Instead, the evidence from the ongoing professional relationship with Zajac of thirty years is that Zajac would have continued working for the pension systems at the prior rate, with modest cost of living increases, even if the pension trustees had not voted in favor of the 33% increase.

Thus, the pensions systems did indeed suffer a real and significant loss as a result of the corrupted salary increase for Zajac. The evidence establishes that the Police and Fire system paid an additional $234,000 to Zajac directly as a result of the corrupt salary increase. The fact that later attorneys for the pension systems years later charged more money does not change the fact that the pensions systems suffered a real loss from the corruption during the period that Zajac continued to work for them from 2007 through 2012.

Stewart also tries to rely upon a December 2008 contract to block a portion of the restitution award relating to Zajac's salary increase. Stewart's claim in this regard is problematic for several reasons. First, the purpose of the December 2008 vote was to secure a five year contract for Zajac. The issue at the December 2008 vote was *not* the 33% increase. Previously, Zajac had been working on an at-will basis, subject to termination with 30-days' notice. The December 2008 vote established the long-term contract that Zajac had long desired. That vote merely continued Zajac's salary level at the level that had been set following the 33% increase from October 2007. The December 2008 vote also is significant for Stewart because Stewart again voted in favor of another valuable benefit to Zajac after Stewart had accepted $5,000 the prior year from Zajac at Stewart's birthday party. Thus, Stewart's December 2008 vote in favor of the five year contract was simply a continuation of Stewart's involvement in the conspiracy. The fact that some members of the conspiracy like Beasley had stopped active involvement in the conspiracy because the Kilpatrick administration had ended does not mean that Stewart had left the conspiracy.

Stewart also opposes restitution on the grounds that Zajac was an expert pension lawyer who was without peer concerning public pension funds. Regardless of Zajac's expertise, the fact remains that Stewart gave a 33% raise to Zajac after accepting $5,000 in cash from Zajac and after accepting drinks, meals, and entertainment for years from individuals having business before the pension systems, as organized by Zajac. Absent the corrupted 33% salary increase voted in place by Stewart, the Police and Fire Retirement System would not have lost $234,000 with Zajac continuing to work as he had for decades without such a significant increase.

The cases cited by Stewart do not undermine a restitution award based on the corrupted 33% salary increase. For example, Stewart relies on *United States v. Schneider*, 930 F.2d 555 (7th Cir. 1991), *United States v. Sublett*, 124 F.3d 693 (5th Cir. 1997), and *United States Maurello*, 76 F.3d 1304 (3d Cir. 1996), wherein the government sought to set loss amounts for sentencing purposes or for restitution based on the entire amount that was paid on the contracts involved. In those instances, the government had *not* reduced the restitution award requested based on the value of the services rendered or to be rendered. In this case, by contrast, the United States is only seeking recovery of the loss resulting from the corrupted raise and not from the total amount paid to Zajac. The thirty years of service leading up to the October 2007 salary increase established the fair value of Zajac's legal services. The government does not seek recovery of the money paid to Zajac up to the level of his salary before the corrupted vote. Instead, the restitution award sought is basely solely on the 33% increase. Thus, the pension system would not receive any kind of windfall, but only the increase that resulted from the corrupted vote by Stewart. Similarly, unlike the cases of *United States v. Jones*, 475 F.3d 701

(5th Cir. 2007) and *United States v. Renick*, 273 F.3d 1009 (11th Cir. 2001) cited by Stewart, the government in this case has provided reliable and specific evidence of the true and uncorrupted value of Zajac's legal services. This value is the legal fee, as periodically adjusted upward based on the cost of living, that Zajac charged and accepted from the pension systems for his legal services for decades. These circumstances differentiate this case from the cases cited by Stewart.

II. The Additional Fees on the ICG Leaseback Deal

Stewart's arguments against restitution based on the additional fees that Shumake secured on the ICG Leaseback deal through bribes and kickbacks are flawed. To begin with, Stewart ignores the whole reason that Shumake paid bribes to Stewart. Stewart claims that he owes no restitution on the ICG leaseback deal because he voted *against* Scenario 8, which included the additional fees to Pankake, Miller, and Shumake, during the September 2007 vote. However, after Shumake started making cash payments to Stewart in early December 2007, Stewart then changed his vote and voted in favor of the ICG Leaseback deal later in December 2007. The version of the ICG Leaseback deal that Stewart supported in December 2007 included the $2.2 million in additional fees that Stewart had voted against before accepting thousands of dollars in cash from Shumake. As a result, Stewart's original no vote against Scenario 8 and the additional fees actually supports a finding of restitution because Stewart's change in his vote from no to yes is evidence of his corrupt intent and his involvement in the honest services fraud conspiracy.

Furthermore, the fact that Stewart objected to the additional fees at the time of the September 2007 vote, but before he accepted the bribe money from Shumake, only serves to demonstrate that Stewart changed his vote based on the bribe money and not based on the merits of the deal. The deal that Stewart voted in favor of in December 2007 included the same fees that Stewart had specifically objected to previously. These additional fees caused a direct loss to the pension system since Shumake would have had to pay the fees to Pankake and Miller if the trustees had not adopted Scenario 8.

III. The McRae Land Deal

Restitution based on the losses suffered from the McRae land deal is appropriate. Stewart's claim that housing projects across the country lost a great amount of money during the recession ignores what happened with the McRae deal. As an initial matter, because of the general losses that occurred during the recession and the difficulty in connecting losses to the corrupt conduct of the conspiracy, the United States has not sought restitution from Stewart based on every corrupt deal where Stewart's support had been purchased. Instead, the government has limited its restitution request to those deals where it can be established that the loss to the pension system was proximately caused by Stewart's corrupt votes and other official action. The McRae land purchase was not simply a real estate deal that went bad.

Instead, it was a deal that the expert real estate advisor to the pension system had specifically recommended against as being too risky and not appropriate for the pension fund. After accepting $10,000 in cash, however, Stewart disregarded this expert advice and proceeded to put at risk millions of dollars belonging to the pensioners. A trustee like Stewart who had not been corrupted by the $10,000 in cash from the third party marketer for McRae would not have pushed the investment like Stewart did in board meeting after board meeting. Stewart thereby helped to cause the loss to the pension system for which he should be held accountable.

Respectfully submitted,

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DATED: January 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2016, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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